UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

YOLANY PADILLA, et al., Plaintiffs, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., Defendants.	C18-00928-MJP SEATTLE, WASHINGTON March 26, 2019 Oral Argument on Request for Preliminary Injunction

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:
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THE COURT: Please be seated.

THE CLERK: This is the matter of Yolany Padilla versus the U.S. Immigration and Customs Enforcement, Cause No. C18-928.

Counsel, please make your appearance for the record.

MR. ADAMS: Matt Adams with the plaintiffs.

MS. KANG: Leila Kang with the plaintiffs.

MR. KORTHUIS: And Aaron Korthuis with the plaintiffs.

MS. BINGHAM: Good afternoon, Your Honor. Lauren Bingham on behalf of defendants, and with me is Brianna Evans from EOIR.

THE COURT: Well, welcome all.

Counsel, we're here this afternoon to have oral argument on the request for the preliminary injunction. I have had an opportunity to review the preliminary injunction, the response, and the reply. And you should have received a series of questions from me that I ask that at some point during your argument that you answer the questions. You don't have to go through each of the questions in lockstep, but at some point during your argument I would like answers to each of them.

So who is it that will argue for the plaintiffs?

MR. ADAMS: Matt Adams, myself. Thank you.

THE COURT: Okay. Mr. Adams, you may begin.

MR. ADAMS: May it please the Court, I will seek to reserve five minutes for rebuttal.

Just last October, after we filed our motion for preliminary

injunctive relief, the Ninth Circuit, in *Saravia v. Sessions,* affirmed a district court order in which the district court granted preliminary injunction challenging the government's failure to provide timely immigration bond hearings. And prior to that, in *Hernandez v. Sessions*, the Court of Appeals reaffirmed that, quote, "In the context of immigration detention, it is well settled that due process requires adequate procedural protections," end quote.

The bond-hearing class in this case are not just asylum applicants, but they are asylum seekers who have already been screened and interviewed by Department of Homeland Security officers and have been determined to have a credible fear, that is, a bona fide claim for protection, for relief under the Immigration and Nationality Act. And because of that, all of them were passed out of the expedited removal process to the immigration court for full immigration proceedings. And because every one of the class members had already entered the country, they're all entitled to a bond hearing. Nonetheless, defendants needlessly delay these hearings by denying access to the bond hearings on a timely basis and prolonging detention by depriving them of the procedural protections that they are entitled to in those bond hearings.

Plaintiffs ask this Court to issue a preliminary injunction in order to ensure that class members do not continue to suffer irreparable harm based upon the deprivation of liberty without

due process of law.

In *Zadvydas v. Davis*, a Supreme Court case addressing another immigration detention challenge, the Supreme Court made clear, in no uncertain terms, that the fundamental principle of freedom from imprisonment, from immigration detention, lies at the core of the liberty interests that the due process clause seeks to protect. And repeated decisions from the Ninth Circuit have made clear that the violation of the constitutional right impinging on liberty is a per se example of irreparable harm.

So I want to turn to the first protection that plaintiffs are seeking, and that is a timely bond hearing. Plaintiffs seek a concrete timeline upon which defendants must provide a custody hearing. And we provided substantial evidence, declarations from advocates across the country, making clear that asylum-seeker class members are subjected to delays, at times up to six weeks, waiting for these bond hearings. In *Saravia v. Sessions*, again, the Ninth Circuit reaffirmed that due process requires, quote, "the opportunity to be heard at a meaningful time," end quote.

Now, defendants cannot dispute that class members are entitled to a prompt bond hearing, as their own guidance and precedents require that they be provided hearings as expeditiously as possible. Yet, defendants refuse to place any parameters, any concrete timelines, upon which these hearings must be provided and instead argue that they should have unfettered discretion.

The Court has asked plaintiffs: What is the basis for proposing a seven-day timeline? And I would like to address that now.

In the credible fear context, Congress laid out a definition for "as expeditiously as possible," and that was in the context of individuals who have the right to have that credible fear determination reviewed by an immigration judge. The statute requires that they be provided that review, quote, "as expeditiously as possible," end quote, and then it goes on to define that. And it defines it as, quote, "to the maximum extent practicable, within 24 hours, but in no case later than seven days," end quote. And that's at 8 U.S.C. 1225(b)(1)(B)(III)(iii).

It's also instructive that the regulations require DHS to provide a custody determination within 48 hours of arresting an individual, and that's at 8 C.F.R. 287.3(d). However, the regulations have no parallel timeline upon which the Court will provide the custody hearing. But the regulations do say that jurisdiction vests with the Court for that custody determination even before DHS files the charging documents with the immigration court. That is to say, an individual who's arrested by DHS can get a hearing with the Court even before those one to two days have elapsed, before DHS has provided the Court with those charging papers. And that's at 8 C.F.R. 1003.14(a). And this, again, reinforces this concept that they're entitled to this

expeditious hearing. But perhaps most instructive is the Ninth Circuit's recent decision in *Saravia v. Sessions.* Because, there, the Ninth Circuit, in October, upheld the district court order that in that case a class of youth, that was provisionally certified, be entitled to a bond hearing within seven days of being arrested. Similar to this case, in that case the government had alleged that in most cases the youth received hearings within seven to fourteen days. Well, the Court found that that was insufficient and ordered that they be provided hearings within seven days. And the Ninth Circuit upheld that based upon its citation to *Mathews,* the due process clause requires "the opportunity to be heard 'at a meaningful time.'"

Now, in addition to that case, we have cited to other case law from the Ninth Circuit in the civil commitment context, particularly *Doe v. Gallinot*, where the Court said that if the state is going to take custody of an individual, that the state must provide a hearing, and I will quote again, "in no event should the hearing occur later than the seventh day of confinement." Of course, in the criminal context, the Fourth Amendment, which is not at issue here, but the Fourth Amendment requires a probable cause hearing even sooner, within 48 hours.

All of this supports a conclusion that is consistent with how Congress defined "as expeditious as possible" in the statute, within seven days, and is consistent with how the Ninth Circuit created the timeline in *Doe v. Gallinot*, "in no case later than

seven days." And we believe the hearing should be within 48 hours. And sometimes our clients do get those hearings within 48 hours, but sometimes our clients wait four to six weeks, and that's what is unacceptable.

There must be a concrete timeline, and the agency should comply with a mandate that requires a meaningful opportunity to be heard within a meaningful time.

I think it's important to note that under the current process, for those who do receive their bond hearing, according to the stats that we cited in our motion that the government released in 2018, for the first eight months of the fiscal year, almost 50 percent -- that is, over 47 percent of those who had their bond hearing -- received an order that they be released on bond amount or on parole. So these individuals are being released -- almost half of them have this opportunity -- but it's being needlessly delayed, delayed at times for days and at times for weeks, and that is irreparable harm.

And, you know, it's interesting to note, in *Hernandez v. Sessions*, the Court pointed to the expense of the government, that the government is paying to the tune of $159 a day per detainee. And if almost half of our class members are going to get bond amounts but should have been released earlier, it's talking about a huge amount of resources that the government is squandering by detaining individuals by not providing them their prompt bond hearings.

But, unfortunately, the bond hearings themselves are not enough, and we see this from our Plaintiffs Blanca Orantes and Ibis Guzman, both of whom were denied bond when they appeared, after the Court placed the burden on them, even though the government had taken away their children and held their children in separate facilities. And we see this not just in the example of our named plaintiffs, but we see that, again, pointed out in the declarations, the supporting declarations that we submitted from advocates across the country. Detained asylum seekers who bear the burden of proof, despite having already demonstrated a bona fide claim for relief under the act, face serious and often insurmountable obstacles to ever having an opportunity to be released, regardless of whether they present a flight risk or danger to the community. And why is that? They are locked up, they are separated from family, they have no opportunity to gather the documents that the court is requiring them to gather to show they're not a flight risk, documents about their identity or about family members or documents about individuals who would support them if they were released. Just as important, they are denied the opportunity to look for counsel, so they don't have legal representation to present their claim and to satisfy the framework that the government has imposed on them.

In addition --

THE COURT: Counsel, can I stop you there for a moment?

MR. ADAMS: Yes, please.

THE COURT: I certainly am familiar with doing lots of bond hearings over lots of years, and I know in the criminal context how that process is run.

Is there anyone who does an interview with the detainee to gather information, you know, name, relatives, you know, what kind of papers do you have, where are you going, what's your plan? Does anyone do that for anyone, whether it be the government or the detainee?

MR. ADAMS: No. In some cases, if the detained individual is fortunate enough to have counsel, the counsel prepares a bond packet for them. But almost 90 percent of these individuals are not represented, so they don't have anyone to prepare that packet.

Now, the government files the record of deportable alien, which lists the demographic information of the individual that they have arrested and detained, but they don't provide any information about family that might support them, they don't provide any of the information on behalf of the detained individual demonstrating why they are not a flight risk. And, in fact, the government is in the better position to get this information. Oftentimes they have confiscated the identity documents of the individuals. They have access to the criminal databases, both domestic and international, that would provide any record, and yet they flip the burden on these individuals to demonstrate why they should be released. And as Judge Tashima

said in the case in *Tijani*, the Supreme Court has consistently adhered to the principle that the risk of erroneous deprivation of a fundamental right may not be placed on the individual. And so in *Tijani,* and then later in *Singh*, the Ninth Circuit made clear that the burden must be placed on the government.

Now, the defendants respond, well, the Ninth Circuit got it wrong in *Tijani* and *Singh*, and they point to the recent case in *Jennings*, but what they fail to acknowledge is that the discussion in *Singh* about the burden of proof was exclusively focused on the due process rights of the individual and relied exclusively on Supreme Court case law dealing with due process. There was no statutory interpretation of the burden of proof in *Singh*.

THE COURT: Let me go back to the hearing itself.

MR. ADAMS: Okay.

THE COURT: The way it works now is that the detainee has the burden of going forward. If the government has whatever, a passport or identification, that they have confiscated, and the detainee basically says, you know, I don't have my documents, are you telling me that the government wins by remaining silent?

MR. ADAMS: Yes, I am.

We have declarations, supporting declarations, where advocates talk about having to submit FOIA, Freedom of Information Act, requests just to get copies of those documents to demonstrate the identity of their clients and talking about

how they have to communicate with ICE and sometimes unsuccessfully get ICE to hunt down where those documents now are.

For example, our clients here had their documents confiscated at the border and then are transferred up to the detention center in Tacoma, and even local ICE often doesn't know where those documents are.

THE COURT: Okay. Thank you.

MR. ADAMS: Now, again, I would like to emphasize that, in *Jennings*, the Supreme Court explicitly refrained from addressing the constitutional issue and said only that the statute is silent as to the burden, and that is certainly so. The statute does not say the burden is on the government, but contrary to defendant's response, the statute does not indicate that the burden is on the detained individual. To the contrary, going back to the '70s, the agency accepted the responsibility of demonstrating, with the preponderance of the evidence, that the detained individual was either a flight risk or a danger to society. And that's in Board precedent, starting with *Matter of Patel*, but then being affirmed in other cases like *Matter of Andrade*, and that's how it's remained, and Congress has never done anything to indicate that it should be otherwise, with the exception of one group, and that's currently those who are subject to mandatory detention.

Starting in 1990 and then evolving until 1996, Congress

selected a group of individuals who have criminal convictions that at first they placed the burden of proof on them to demonstrate that they should be released and then ultimately made it the default that they are not even entitled to a bond hearing. That's currently at 8 U.S.C. 1226(c).

Now, there is an exception to those who are subject to mandatory detention at 1226(c)(2), and it carves out a group who are under the government protection witness program and says that if that group of individuals demonstrate by clear and convincing evidence that they're not a flight risk or a danger, they may be released. But it's only that small group of individuals who are otherwise subject to mandatory detention that even have the burden placed on them. Otherwise, Congress has been silent as to who should bear the burden in these proceedings.

But the Supreme Court has not. And that's what Judge Tashima's dissent, I think, most eloquently explains in his -- not dissent -- his concurrence in *Tijani,* and then the Court also goes with in *Singh* and is also relied upon in *Hernandez*, when they cite back to Judge Tashima's concurrence. Although I don't mean to imply that in *Hernandez* they address the burden of proof, because they do not. But what they addressed there is that the Supreme Court said that the government must bear the burden. And they looked at cases like *Salerno*, which was a pretrial detention challenge to the Bail Reform Act, and there the Court rejected the challenge based upon the procedural protections that are in

the Bail Reform Act and relied heavily on the fact that the burden was placed on the government to demonstrate with clear and convincing evidence.

Now, in contrast to that, in *Foucha v. Louisiana*, the Court struck down a Louisiana statute because it placed the burden of proof on the individual to demonstrate why they should be released. One other thing that I note with respect to the burden of proof: Given that, by definition, our class members all have been found to have a credible fear, and, thus, a bona fide claim for protection, they are even in a better position. Pursuant to the Board's decision in *Matter of Andrade*, eligibility, bona fide relief, is a key factor in assessing a flight risk. The fact that they demonstrate -- that they actually qualify for relief demonstrates that they have every motivation in the world to appear to their hearings, to then make their claims for asylum, to obtain the stability and the protection that they're seeking in the first place.

Now, I want to move on briefly to two other things that we've requested for our class members, and one is a record of a hearing. Unlike every other hearing before the immigration court, EOIR does not require immigration judges to record bond hearings and does not provide transcripts of those hearings for appellants, people who challenge the denial or the amount of the bond, even though they're equipped in every hearing to do so. And, in fact, in their declaration, the government has said they

even recorded two of our plaintiffs' bond hearings after we filed these claims. Yet, the Ninth Circuit has made clear that the liberty interest is, quote, "fundamentally affected by the BIA's refusal to provide transcripts or an adequate substitute created contemporaneously with the hearing," end quote. And that's from the *Singh* case again. And that follows up from the Ninth Circuit's decision in *Bergerco* where it says, "Where a defendant makes allegations of error which, if true, would be prejudicial, the unavailability of a transcript may make it impossible for the appellate court to determine whether the defendant's substantive rights were affected," end quote.

And, again, we provided supporting declarations from advocates discussing how difficult and often impossible it is to demonstrate a basis for the appeal without a transcript on which to point out the errors that the judge has made either in factual findings or in relying on inappropriate case law.

One thing that I would note is the defendant's own arguments support us in this regard. Now, defendants will argue that our plaintiffs should be required to exhaust their appeals to the BIA, and the reason they argue that, and I'm going to quote from defendant's brief, is that, "Indeed, without a record on the claim, it is not possible for this (or any) court to assess whether the alien has demonstrated harm," end quote. Now, they're arguing for exhaustion, and I will address exhaustion in a second. But that is true as to our plaintiffs. That is why

they need a record, so that they can go before the Board and show the harm they suffered in the underlying hearing before the immigration judge. Without that transcript, they have no way to show the judge that -- or rather to show the Board that the judge inappropriately disregarded evidence of the relative because the relative didn't make more than some arbitrary amount of the poverty level. And we have declarations talking about examples where the judge did just that. Or like Blanca, our main plaintiff, Blanca Orantes, where the judge completely refused to address the fact that she had been separated by the government from her child and that her child was in another detention center. The judge refused to address that. And yet without a transcript, we have no opportunity to present those facts to the Board of Immigration Appeals.

Now, I'm going to digress a little bit to the Court's question regarding exhaustion. So the government argues that exhaustion should be required, yet this is precisely along the lines of *Hernandez v. Sessions* where the Court made clear that exhaustion was not required because -- and they laid out the *Puga* factors -- we're dealing with a pure legal matter, one that's already been clearly established by the agency, and so it won't help to develop any more factual record or administrative record; and, two, it's likely that it's going to be futile for these individuals to appeal, given that the agency has already established their position in precedential decisions, and it's

not going to encourage other individuals to bypass the administrative appeal process because, once it's resolved, it will be resolved for all class members. And in addition, as this Court has noted, the harms that are alleged, are those going to the appellate process themselves, and since it's challenging the failures of the appellate process, that's yet another reason why prudential exhaustion should not be required in this case.

And then turning to the last point, and that is the failure of the agency to require the judges to issue contemporaneous individualized findings. Instead what happens is an individual has a bond hearing. At the end of the hearing, they're provided basically a rubber-plate sheet saying you are denied bond or you are granted bond in this amount. And then if they appeal that, after they file their notice of appeal to the Board of Immigration Appeals, the BIA then notifies the immigration judge that an appeal has been filed, and then, and only then, the immigration judge issues what they call a bond memorandum, a summary account of why they denied bond or issued it at that amount. And this happens weeks after the actual hearing, after the judges have, in the interim, heard hundreds of other cases at times. And all of this is -- and I have to -- I just want to cite one example that we have submitted in Docket 51, the declaration of Mr. Jong, an attorney with the Southern Poverty Law Center, who talks about one case where he said, "When I asked Judge Marks Lane for her reasoning for denying bond, she

responded that she would provide the reasoning in a written decision if the decision was appealed," end quote. Even with an attorney, they're representing -- places that attorney in an impossible position to then file the notice of appeal because the notice of appeal requires that he specify the factual findings or the legal findings that he thinks are in error. And I'm referring to 8 C.F.R. 1003.3(b). And, indeed, both the Board and the Ninth Circuit have sustained denials of appeals based on the failure to file an adequate notice of appeal. We cited to the *Matter of Keyte*, 20 I&N Dec. 158 from the BIA. But even more recently, in the Ninth Circuit, *Rojas-Garcia v. Ashcroft*, which was 339 F.3d 814. And it's not just on the notice of appeal. Then the individual also -- so when you file a notice of appeal, you have a box at the bottom that says either you want an opportunity to subsequently file a brief or you are not submitting anything beyond what you are submitting with that packet. So oftentimes with our clients we submit our brief with the notice of appeal in order to try to expedite that appeal, since our client is sitting there detained waiting for the Board to decide it. The government responds, well, they can wait, they can ask for a delay in the briefing schedule, or they can wait for the Board to eventually remand the case months later, saying the judge didn't get it right and they need to have a more fleshed-out decision for the Board to review. But that is no remedy. That's asking our clients to continue to suffer an

unlawful deprivation of liberty waiting for the government to create the record, the basic procedural protection that's necessary, in order to know whether they should appeal the case or not.

And the last point I would make about that -- you know, I cited the example of an attorney who was flabbergasted by the judge's response, about how much more difficult it is for us when we're dealing with our pro se class members who appear in court with an interpreter, often have no clue what's going on, and then afterwards, if they're seeking legal representation in order to try to understand whether they can appeal it, they have no way to communicate the basis on which they were denied a bond. And so there's absolutely no basis for the counsel then to lay out the reasons in a notice of appeal, if they were to agree to make that case. These are basic procedural protections.

And the government has not even argued, and can't argue, that it creates any expense with respect to the burden of proof. They haven't argued that it would be an expense with respect to the record or the transcript, in large part because they already have it set up for recording every hearing that's before the Court. Now, it could create a cost -- we don't deny -- to require that the hearing be within seven days. They're going to have to perhaps provide additional resources. But as the Ninth Circuit made clear in *Hernandez v. Sessions*, they're also going to save millions of dollars by having people bond out of detention days

and weeks before, when the government is paying $159 per person per day for their detention. And, ultimately, as the Court said in *Hernandez v. Sessions*, whatever minimal expenses there are, they can't be justified at the expense of what's at stake for class members, and that is their liberty. And in *Saravia v. Sessions*, the Court made the same determination, that it was insufficient. Whatever expense it may be to transport those youth across the country to the bond hearings, which was one of the things they required, it still was not enough to overcome what was at stake for the youth, which was, again, their liberty in those bond hearings.

THE COURT: Counsel, are you asking specifically -- I'm thinking about the logistics of this. And one is, is that, are you asking that there be written findings of fact and conclusions of law, or would it be acceptable to have spoken findings of fact and conclusions of law that go on the tape?

MR. ADAMS: We are asking that there be written findings of fact, so that there is a piece of paper that that pro se person can then provide to an individual to say, this is why the judge denied me.

THE COURT: Okay. But you would be satisfied with them being handed a flash drive or something that had the oral presentation of the evidence?

MR. ADAMS: That would work if they have counsel. But for the 90 percent who don't have counsel, what are they going to

do with that flash drive? You know, they're in the detention center. Unless they have access to obtain the information on that flash drive, it probably is not going to do them any good.

So what we're asking is that those bond memoranda, instead of waiting four to six weeks afterwards, they be issued the day of the hearing.

THE COURT: Well, what I'm looking at is, is that the reality is that you can get a transcript instantaneously. In other words, I can read every word that you just spoke right here, and I can hit a button and it prints out. So I could hand you the transcript today.

If I were to make spoken findings of fact and conclusions of law on the record, hit the button, and you would have them in writing, would that satisfy you?

MR. ADAMS: That would. As long as our class members have access to some -- you know, whether the judge produced them handwritten or it's a transcript of the oral findings and they have records access to that, that were transcribed, that would absolutely satisfy what we believe is required as a minimal protection under the due process clause.

THE COURT: So, in fact, you're not asking for anything. You have already got a recording. What you are really asking for is realtime and the ability to copy?

MR. ADAMS: Yes. Although I would add a caveat, already there's the potential for recording. They're not recording all

of these bond hearings. In fact, it was noteworthy that in their declarations the government said, well, they recorded two of the plaintiffs. They didn't assert that they recorded the other two.

And the other thing that I would note, like referring back to Mr. Jong's declaration, is that some judges are not providing the reasons for their decision there in the hearing. And so they must be instructed, if it's going to be on the record, then they need to go ahead and explain why they are denying bond.

THE COURT: Okay. But it's as simple as purchasing, like, Dragon software?

MR. ADAMS: It is, yes.

THE COURT: All right. Thank you.

MR. ADAMS: Thank you.

So I'm out of time, but there's a couple of points that I have not addressed from the Court's questions that I would like to get to. And one is, should our plaintiffs' claims be dismissed -- or not dismissed, because we have the class certified, but is preliminary injunctive relief appropriate because our named plaintiffs have already been released? And, again, this case is on square with a myriad of other cases addressing detained individuals. And there are both cases certified here in this district court, like *Rivera*, like *Martinez Baños*, but also cases from the Ninth Circuit, like *Hernandez v. Sessions*, where it shows that individuals who are subsequently released are nonetheless able to pursue preliminary injunctive

relief -- I mean, plaintiffs, that is, who are released are able to pursue preliminary injunctive relief on behalf of the class because it is a transitory class. And, in fact, just -- what, two weeks ago? -- in *Preap v. Nielsen*, Justice Alito's decision, again, said that it matters not that these individuals have been released, because this is an inherently transitory class. They received relief prior to whatever injunction was provided, but that is no bar to the Court providing that form of relief. So I don't think there can be any serious dispute that this Court has authority to provide preliminary injunctive relief, notwithstanding the fact that Ms. Orantes and Mr. Baltazar Vasquez have already been released.

And so if there's no further questions, I'll save myself some time.

THE COURT: One more question. Can you give me some idea of volume? In other words, in a year's time, how many hearings are you potentially facing?

MR. ADAMS: Well, we have not been provided the quantity of class members because discovery has not yet commenced in this case, but we believe there are a few thousand class members. And that might be overstating it. In the bond-hearing class, there could be maybe a third of what's in the credible-fear class. We don't know because it fluctuates drastically over time. But it could be anywhere from close to a thousand to a few thousand individuals who are given these bond hearings.

THE COURT: Nationwide?

MR. ADAMS: Nationwide, that's correct.

And then depending on how many of those appeal it -- you know, who don't just post bond immediately, instead appeal it -- then it goes into that process.

But one of the things that I think is important is the declarations provided by the government in Exhibit 66 and 67 from the court administrators. Again, they state that they're providing most of these hearings -- the language they use is, quote, "in most instances." They say, "In most instances, we're providing hearings within seven to fourteen days," or "most instances, within ten days." And if that is the case, then it should not be a tremendous burden for them to comply with a more concrete timeline. And certainly as they move forward, they're in a position to adjust their calendars to do so.

Thank you.

THE COURT: Thank you.

MS. BINGHAM: Good afternoon, Your Honor.

Plaintiffs' motion for preliminary injunction should be denied because they cannot show that they are entitled to preliminary relief requiring defendants to provide bond hearings within seven days as a matter of constitutional law in all cases. Nor can they show that they are entitled to overturn long-standing bond procedures via preliminary injunction.

To start, I would like to address the likelihood of success

on the merits. There are two distinct issues before the Court: Plaintiffs' bond timing challenge and plaintiffs' --

THE COURT: Counsel, if you want a record of this, you are going to have to slow down.

MR. ADAMS: Oh, I'm sorry.

THE COURT: I cannot get a record. I have got smoke coming out of the court reporter's ears. And, remember, I can read what you are saying. So, please, slow down, or you are not going to be able to have a record when you want to appeal me.

MS. BINGHAM: I will do my best, Your Honor. Thank you for the reminder.

I would like to start first by talking about their bond timing challenge, then I will move on to their bond procedures challenge, and I would also like to address the irreparable harm and the balance of equities.

Plaintiffs can't show that they are entitled to a bond hearing within seven days of request in all instances as a matter of constitutional law. Their detention is governed under 8 U.S.C. 1225(b)(1)(B)(ii), which provides that they should be detained for further consideration of their application for asylum.

In 2018, in *Jennings*, the Supreme Court explained that aliens, like plaintiffs, are not entitled to bond hearings at any point of their proceedings under the statutory text. Now, though, plaintiffs claim entitlement to that bond hearing in

seven days on constitutional grounds. Their argument asserts that they're entitled to protection of the due process clause by virtue of their brief presence in the United States, and because they are entitled to the protection of the due process clause, they're ipso facto entitled to their bond hearings within their preferred time frame. But their analysis is incomplete because determining what process they're entitled to is a two-step analysis. Even if the due process clause applies to them, this Court must determine what process that they're entitled to. And in making that determination, this Court has to consider their status as aliens who were unadmitted to the country and who enter the country unlawfully and were apprehended within a very short period of time. They may lack any ties to this country whatsoever.

When the Supreme Court has examined the due process rights of aliens like plaintiffs, it has concluded that they're entitled to only the process which Congress has given them. That is explicitly laid out in *Mezei*. A quote is, "As aliens on the threshold of initial entry, their rights are limited to only the procedures provided by Congress." And that's at *Mezei* at page 212. Here, the process provided by Congress has resulted in them having been found to have a credible fear, and that has provided them the opportunity to present their claims to an immigration judge and has provided them with the opportunity to have a bond hearing, a bond hearing that's already scheduled as

expeditiously as possible under the circumstances, under those unique circumstances of whatever immigration court that they may be before.

So I would like to take this opportunity to address your question about *Zadvydas*, which was that once an alien enters the country the legal circumstances change, for the due process clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.

The due process clause does apply, but as I stated earlier, what the Supreme Court has found, going back decades, is that the process that they are entitled to is the process that Congress has given them. That process here has -- the plaintiffs have already received it.

Even if they have some additional due process rights by virtue of their brief entry, it would be on the lowest ebb of the sliding scale of due process. And even *Zadvydas* itself talks about that the nature of due process protection varies, depending on the status and circumstances, and notes specifically that aliens who had not gained initial entry into the country would present a, quote, "very different question" than the one that was raised in *Zadvydas*.

THE COURT: Well, *Zadvydas* was different. This class of people have credible fear and are entitled to a bond hearing, correct?

MS. BINGHAM: That's right, under current law.

THE COURT: All right. So let's move on from there. Just what kind of a bond hearing are they entitled to?

MS. BINGHAM: The bond hearing that they're entitled to under current law is consistent with the bond procedures that are laid out at 8 U.S.C. 1226(a), and that's the bond process and procedures that they're getting. And when we're talking about due process claims, like the ones that plaintiffs have put forward, this Court has to look at the guidance that's been provided by the Supreme Court in these due process questions. So we're talking about *Matthews v. Eldridge* and *Landon v. Plasencia*. And it has to consider all of the relevant factors.

Plaintiffs' requested injunction --

THE COURT: Counsel, you want a record, you have to slow down, okay? The court reporter can't understand you, and I can't process it either when you speak that quickly. So if you want to persuade me, you are going to have to slow down, please.

MS. BINGHAM: I'm sorry, Your Honor. I'm trying. I will try harder.

We have to look at the guidance that the Supreme Court has put forth in *Landon v. Plasencia*, which has laid out a balancing test for these due process claims. Plaintiffs' requested relief does not take into account all of the relevant factors that are laid out in this balancing test. It does not account for the government's weighty interests in the efficient administration of

immigration law and it does not take into account the efficient allocation of government sources, which are specifically laid out as important and weighty factors in *Plasencia*.

THE COURT: Well, let's talk about costs.

MS. BINGHAM: Yes.

THE COURT: All right. Costs have never been one of the considerations when you're talking about constitutional rights. For example, in criminal cases, it doesn't matter if you don't have enough courtrooms; it doesn't matter if you don't have enough judges. What you do is you process those cases and you get them done in a timely fashion.

Why is cost something to be considered here?

MS. BINGHAM: Your Honor, the test that the Supreme Court has put forward for due process claims like this is laid out in *Matthews v. Eldridge* and in *Landon v. Plasencia.* And in those cases, the Supreme Court has explicitly stated that one of the factors in the balancing test is the government's interest in using the current procedures. And one of the government's interests is efficient administration of the immigration enforcement law -- excuse me, efficient administration of the immigration laws, which is a specific -- *Plasencia* notes specifically. And so it's not that this Court can ignore cost; it's that this Court has to take into account the government's weighty interests, and that is specifically laid out in *Plasencia*.

THE COURT: Well, couldn't I be able to do that by saying 47 percent of these are getting out on bond, and if you did it faster, there would be a savings of $159 a day, which would save the government a lot of money?

MS. BINGHAM: Your Honor, I don't think that's accurate. One of the things that I think is important to note here is that, for example, in *Rodriguez* -- and the injunction is still in place in the Central District of California -- defendants are actually enjoined from conducting those prolonged detention hearings before seven days have gone by, after notice, because that court found that that was necessary to provide notice for counsel, for the alien, you know, to get interpreters, for all of these things to be prepared. So if these hearings are happening more quickly, I think that it's completely speculative that there would be any savings at all. It's possible that counsel and the alien, him or herself, would not be prepared, and, thus, we could have a different outcome than the outcome that we're currently having.

I think also the important point to remember, when we're talking about plaintiffs' assertion that 40 percent -- excuse me, 47 percent of their class gets out on bond, is that the burden that they are complaining about here is obviously not insurmountable and is not causing irreparable harm.

THE COURT: Where can I find how much the government is spending on these hearings by not giving them within seven days? I mean, are you telling me the $159 a day is wrong?

MS. BINGHAM: I don't know the exact amount that it would cost to detain someone, Your Honor. I think that varies across the nation, how much it costs to detain a person.

I think the point that we're making here is that the immigration courts right now have the flexibility to ensure coverage of the most compelling needs. This, I think, is very different than the criminal context, where state and federal courts do have the ability to prioritize things on their dockets, you know, according to what needs the most resources at that moment. I think that that's different in the immigration court context because all of the hearings are immigration court hearings. And if there are bond hearings happening within this time frame, that necessarily means that other hearings are going to be postponed or canceled. And that's what we have laid out in declarations that we have attached at ECF 66 and 67.

THE COURT: Counsel, let's get back to my question. Opposing counsel said this is the cost and told me that 47 percent of the class members get released on bond. Where can I find a counter to that in your materials?

MS. BINGHAM: We haven't submitted anything that talks about the cost of detaining individuals. I think the point is that Congress has directed that these individuals be detained, and so --

THE COURT: So you don't have anything in your materials that talks about the costs of detention?

MS. BINGHAM: That talks about the cost of detention, no.

THE COURT: Okay. Thank you. Go ahead.

MS. BINGHAM: I think that -- I think that the other point that I wanted to make, since we started talking about Your Honor's question about what is different between criminal courts and what's different been immigration courts, is not only the fact that there's an explicit balancing test that's laid out in *Plasencia* and how to balance these claims in the immigration context and it talks about the government's weighty interests in this immigration context, but I think that there are just a number of practical differences between criminal court and immigration court. I think that there's different constitutional and statutory rights that are in place that are just not the same.

THE COURT: Well, let's get practical. In the sense that there's a bond hearing, I'm assuming it does not last days.

MS. BINGHAM: No.

THE COURT: It lasts moments.

MS. BINGHAM: Yes.

THE COURT: You have got, counsel says, 3,000 across the nation. Seattle Municipal Court does 3,000 bond hearings in a month. Every court in this nation that has any kind of detention does those bond hearings, and they do them efficiently with far fewer numbers. So I'm not understanding with these ... This is

a very small group of people.

MS. BINGHAM: I don't think that's accurate, Your Honor. We don't have anything in the record at this point. And as counsel pointed out, discovery hasn't started. But I don't think it's accurate to say that this is a very small class.

THE COURT: Well, then give me some idea of what you think it is.

MS. BINGHAM: So I am aware of statistics, and I'm referencing -- this is an 83 Federal Register 55, just for the Court's knowledge, that, for example, in fiscal year 2018, immigration judges completed over 34,000 total cases that originated with a credible-fear referral. So those are -- that's going to be over-inclusive, because that's going to include folks who are members of the credible-fear class but not in the bond-hearing class. But I think that that goes to show that it's not just in the low thousands.

THE COURT: But how many bond hearings did they do?

MS. BINGHAM: Even assuming that this is half, that would be 15,000.

THE COURT: That's still a pretty small number, counsel, when you talk about how many people get processed. Again, I'm going to tell you that, just down the street, bond hearings are happening at extraordinary rates because they are routine, they are short.

I still want you to address the issue of why this is so

difficult.

MS. BINGHAM: Well, I think that the declarations really provide the evidence of why this is difficult, which is to say that the immigration courts, as we know, already operate at max capacity, and their dockets -- these were in declarations that were submitted in September -- but their dockets were already scheduled into November and December at that time, and that's with leaving certain blocks of time open to conduct these bond hearings. Sometimes leaving those certain blocks of time open to conduct those bond hearings, there's still going to be more bond hearings than that. It's something that obviously fluctuates, depending on the number of people who are entering the country and DHS's enforcement practices at the time. And so I think that we're talking about practical effects here. And particularly with respect to the declarations that we submitted here, some of these immigration courts deal with an entirely detained docket. So that means, if we are prioritizing these bond hearings over other hearings that are happening, those are also for individuals who are detained, and so that could be anything from a credible-fear review or a reasonable-fear review to a bond hearing for someone who is recently arrested pursuant to 1226(a). It could also be a final merits hearing for someone --

THE COURT: Counsel, this is the third time.

MS. BINGHAM: I apologize.

THE COURT: Okay. If you can't slow down, I can't get a

record. You are going to have to do it because otherwise --

MS. BINGHAM: I'm very sorry, Your Honor.

THE COURT: -- you will be without a record. I don't want that to happen.

MS. BINGHAM: I don't want that to happen either. I am trying my best, and I will continue to try.

As I was saying, all of the other hearings for some of these courts involve individuals who are detained, and it may even be their final merits hearing that is going to be pushed back. And some of these merit hearings, as I'm sure Your Honor knows, can be quite complicated, like evidentiary hearings, requiring the coordination of not only the alien and counsel for the government, but their counsel, witnesses, interpreters, maybe even experts, this sort of thing. So as the declarations set forth, there could be a ripple effect and cause further backlogs.

Also, I wanted to make a couple other practical points, since Your Honor wants to talk about them. The bond hearing is really akin to a second appearance, because DHS already makes an initial custody determination. And as my colleague on the other side pointed out, that initial custody hearing takes place very quickly. So that's really more akin to the probable cause hearing in the criminal court context, if we want to go there. So it's really a custody review.

The other thing is, the triggering event at this time is the alien's request. The alien's request is simply a check box on a

form that says "I want a bond hearing." So as soon as the immigration court receives that form, that's when the obligation to schedule that hearing is going to kick in. And so that may be before they even have counsel, that may be before their master calendar hearing at which bond hearings and things like this are discussed. So I think that there's some practical issues here that are not being considered in plaintiffs' briefing.

So if that concludes Your Honor's questions on the bond-timing challenge, I would like to move on to the bond-procedures challenge.

So plaintiffs -- one of the questions that Your Honor raised was about exhaustion. And the reason I want to talk about exhaustion here is because these plaintiffs -- first of all, the procedures were never applied to them. The two named plaintiffs for the bond-hearing class have recorded hearings, so the procedures that they complain about were not even applied to them. Plaintiff Vasquez stipulated to an amount, and so no procedures whatsoever were applied to him. Plaintiff Orantes had a recorded hearing. She did not receive a bond. She reserved appeal, but then was later released, but she did not perfect that appeal process.

And so while plaintiffs argue that exhaustion is not required, exhaustion here has -- the BIA has the opportunity and the responsibility to fix any problems that arise during that appellate process.

Your Honor asked, is it necessary for them to have completed an appeal of an adverse bond hearing when the injuries claimed are alleged to have negatively impacted the appeals process itself? The answer to that is yes, because the BIA has the opportunity and the responsibility to fix any errors, including any errors that arose during that appellate process.

I also just want to make one thing procedurally clear, which is that plaintiffs complain about the availability of a written bond memorandum. And that written bond memorandum is not going to prejudice any class members on appeal because, when that appeal is filed, that triggers the immigration judge's responsibility to compose that written bond memorandum. And briefing deadlines are not set by the BIA until that bond memorandum is completed. So they're never going to have a situation where they are having to compose a brief without the benefit of those written findings.

THE COURT: Well, now, wait a second. Aren't they still sitting in custody while that process takes place?

MS. BINGHAM: Yes. That's right, Your Honor.

THE COURT: So it does slow it down?

MS. BINGHAM: Any appeal slows it down.

THE COURT: All right. And aren't you processing a lot of requests for appeals that may not be necessary if you actually gave people reasons in the first instance? In other words, if there are reasons laid out, they could consult counsel, and some

of those counsel might say, "There's no point in appealing here."

MS. BINGHAM: Well, I think that the immigration judges typically rule orally, so they're going to be in possession of those reasons even if the written findings are not composed until later.

THE COURT: So why not just print them out and hand them over?

MS. BINGHAM: Well, I think there's a practical problem with that, which is that the immigration courts use a third-party service to transcribe their hearings. So it's not as efficient or fancy as what Your Honor has before you.

THE COURT: Well, sometimes I use third-party services too. They're contract services.

MS. BINGHAM: Uh-huh.

THE COURT: Okay. So they're same thing.

MS. BINGHAM: So they don't have the ability to do it immediately.

THE COURT: Why not?

MS. BINGHAM: They are not set up for that with their technology.

THE COURT: But it seems that it would be so easy to get that done, to simply have the transcript printed out. I mean, for Pete's sake, you can get an app that does this, you know. You know, if you want to send out a Tweet.

MS. BINGHAM: Your Honor, I think that the immigration

courts -- and this is something we have been talking about through this hearing -- the immigration courts are in a position to efficiently balance all of their needs, and that includes budgetary. And so that's one of the choices that they have, is they have their existing software, which requires --

THE COURT: So the real answer, they're not willing to spend the money in order to provide this ability to have a transcript?

MS. BINGHAM: I don't think that's the real answer, Your Honor. I think what we're talking about here is not what plaintiffs or Your Honor thinks is the ideal process, but rather what's the minimum amount of due process that's required. And what we have to do to determine that is look at *Landon v. Plasencia*, where the Supreme Court has laid out that balancing test.

THE COURT: But the Supreme Court hasn't touched any of the practical applications of these things. In other words, I see huge amounts of inefficiency in having people file appeals and then going back and getting a record. You know, you are going to have people filing appeals that are never going to have any chance of going forward. You're also going to detain people longer while you put together an appeal. So why shouldn't I look at the practicalities and say, you know, there's a faster, cheaper, better way to do this?

MS. BINGHAM: I think that there may be a faster, better

way, cheaper way to do this, but that doesn't mean that it's what is required by the due process clause. And that's what plaintiffs are asking for, is what they believe is required by the due process clause. And I think that we have shown in our briefing that this is not required by the due process clause.

And I want to read a quote from *Plasencia*, which I will attempt to read as slowly as possible, which says that "The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the due process clause and does not extend to imposing procedures that merely display Congressional choices of policy."

And so here we have a situation where we're not imposing -- where the Court is not responsible for imposing what it thinks is the best, most efficient way to do this. The Court is responsible for determining whether the procedures meet the essential standard of fairness, and the test that is laid out for that essential standard of fairness is in *Landon v. Plasencia.* And in *Landon v. Plasencia*, one of those factors, Factor No. 3, is the government's interests in maintaining the current procedures. And so that has to be accounted for in this Court's analysis.

Your Honor, I see that I'm very close to being out of time. I would like to address briefly irreparable harm and balance of equities, and I think Your Honor also had a couple other questions, which I will attempt to address quickly, since I don't

want to take too much time.

I think that you asked a question about how the claims of this class are different than the class -- than those in *Hernandez v. Sessions* and in *Ms. L.* I think the difference here is that the parties in those cases, the complained-of harms actually happened to them, even if they weren't happening at that time. Here, that is not the case. The harms that plaintiffs are complaining about, which is the lack of a recording, they received a recording. They complained about not getting a bond memo, but neither one of them ended up pursuing an appeal. They complain about not having a transcript, but, again, there's no appeal, they were both released. So I think that that is a critical difference that this Court has to consider.

Your Honor also asked a question about the timing here, and why seven days, why not 14, why not 21. I think that that's a really great question, and I think that that goes to show that there's really no case law out here that supports the imposition of a seven-day time frame, or really any of these time frames, because what we have is this balancing test, and the immigration courts are already scheduling these hearings as quickly as possible, under the circumstances, which is consistent with the requirements of the due process clause.

On irreparable harm, I want to make a couple quick points, which is that they're receiving bond hearings. There's no allegation that they're not receiving any hearings. It's just

not as quickly as they desire them. They have not identified a single class member that's languishing in detention without a hearing. And if there ever was that sort of instance, they, of course, could always file a habeas asserting prolonged detention. There's also --

THE COURT: Counsel, they filed lots of affidavits from counsel across the country that talked about long periods of time in detention, and if you have a constitutional right to have due process, isn't even a day, or a moment longer than necessary, harm?

MS. BINGHAM: I think that that can be harm, but it's not irreparable because they have the option of a habeas. So I think that that's what we have to look at when we're looking at the preliminary injunction standard.

THE COURT: Counsel, habeas is a long, drawn-out process. So if you have one day that you are not supposed to be in detention, how do you ever get that day back?

MS. BINGHAM: That is simply what's provided for in the habeas laws. That's the process, when you think you are being unlawfully detained ever, and that's the remedy that Congress has provided in these circumstances.

THE COURT: Well, you are talking about unlawfully detained. I'm talking about being detained when the default should be liberty, if that's what the Constitution requires. In other words, you don't get those days back. They are gone.

Isn't that harm, if there's a constitutional violation?

MS. BINGHAM: I think that that is harm, but I don't think that that's the question on the preliminary injunction standard. The preliminary injunction standard is irreparable harm.

THE COURT: And loss of liberty is not irreparable harm?

MS. BINGHAM: Not when there's another way to repair that harm, which is via a habeas.

And when it comes to their bond procedures challenge, again, they have not presented any evidence that the bond procedures are causing irreparable harm such as the Court must intervene immediately. These bond procedures have been in place, no party disputes, for years.

THE COURT: Well, we're talking about two different things here. You are talking about a legal remedy, and I'm talking about the harm of being in custody longer than the Constitution requires. And it's my understanding that there's case law out there that as soon as you've got a constitutional harm, assuming that I find one, then you've got irreparable harm, because you have been detained; your liberty is valuable, and it is gone.

MS. BINGHAM: I think that this question bleeds back into the question on the merits, which is whether they have a constitutional right to this rigorous seven-day deadline that they want. And we have cited case law that say aliens in this

circumstance are entitled to the process which Congress has given them, and there is no requirement from Congress that they be given a bond hearing before they hit eight days. So I think that there isn't a question of irreparable harm here if they're not entitled to this.

On the balance of the equities, the government's interests are the public interests. In this case, the government has a weighty interest in the sufficient administration of its immigration laws -- and that's as the Supreme Court stated in *Plasencia* -- as well as the sufficient allocation of resources. This case requires prioritization of the immigration courts' limited resources to ensure the greatest coverage of the most compelling needs. Defendants already schedule bond hearings as expeditiously as possible. That same consideration guides the agency's decision that generally immigration judges should rule orally and not expend unnecessary attention on composing written bond decisions unless they are needed for an appeal. If this Court grants plaintiffs' requested injunction, it would undermine the agency's attempt to allocate resources while taking into consideration the agency's competing demands.

If Your Honor has no further questions, I'm out of time.

THE COURT: Thank you.

MS. BINGHAM: Thank you very much, Your Honor.

MR. ADAMS: Thank you.

Defendants assert that no harm occurred to our named

plaintiffs. Ms. Orantes was denied a bond. She remained another ten days detained. Because of the Court's order in *Ms. L*, she was finally released to be reunited with her child. From when she passed her credible-fear interview, she was almost a month detained. She certainly suffered harm and there's certainly no room for the government to say a month's detention is not irreparable harm. As this Court has already noted, in *Melendres v. Arpaio* and countless other cases, violation of a constitutional right does constitute irreparable harm, and the reason preliminary relief is needed is because thousands of individuals continue to suffer this harm.

Now, they point to the fact that a recording was made in Ms. Orantes' case. We didn't learn of that until defendants advised us, after we filed this action. There was no notice that she had a right to seek a transcript or ask the government for a recording because, generally, they don't make recordings. The fact that they did it after we filed this case was of no value to her.

The government also disputes the savings, saying that it's speculative because counsel or the class member may not be ready for that hearing. But, again, what we have requested is a bond hearing within seven days of their request, so, presumably, they're ready for the hearing because they're asking for that hearing. It's a little different than the preliminary injunction that was granted in *Saravia*, where it was just within seven days

of the arrest. So there are individuals who are gathering documents and may not immediately request. In fact, most times clients don't request -- our clients don't request hearings until they get counsel, and then we call up the court or send in the written notice.

Now, plaintiffs simply try -- defendants are trying to turn case law on its head by saying our plaintiffs are not entitled to any due process other than what Congress has provided. They're citing the law that deals with the legal entry fiction, and the Court has already found that in its order in the motion to dismiss. And, in fact, they cite to *Mezei*, which undermines it, where *Mezei* explicitly distinguishes those who already entered the country as being on separate footing. You know, they've made that same argument in *Zadvydas*. They said that person already has a final order of removal. They made that same argument in *Saravia*, against the class of youth, who had these alleged public safety concerns. They make it against every group, and in every turn the Court has rejected that. Once someone has entered the country, case claw is clear, they are entitled to what due process provides. And as the Ninth Circuit just said, due process provides an opportunity to be heard at a meaningful time.

And we agree that -- and, actually, I want to address one other point. They tried to paint the determination by the DHS officer as the probable cause hearing. The DHS officer is the arresting official. The arresting official then decides whether

to cut loose the person he or she has arrested. That is not akin to a probable cause hearing before a neutral magistrate. Their only shot at a neutral magistrate is that bond hearing.

They try to backpedal from the case law, talking about due process in a criminal context. Yet, those arguments were rejected in *Hernandez v. Sessions*. And I would just point to page 993 of that *Hernandez* decision, where the Court forcefully rejected that, saying "The government claims cases involving criminal detention are irrelevant to immigration detention. On the contrary, the Supreme Court has recognized that criminal detention cases provide useful guidance in determining what process is due noncitizens in immigration detention."

And lastly, with respect to *Jennings*, they've, on the one hand, admitted that our clients are entitled to a bond hearing. The *Matter of X-K* makes that clear, and that's binding agency precedent. *Jennings* addressed its interpretation of the statute with respect to a certified class, and that certified class included only individuals who fell under the legal fiction entry, that is, people who are detained at the port of entry. And so even plaintiffs conceded they were subject to mandatory detention. That case is not instructive. It doesn't inform us as to the process that's required under 1226(a). And, indeed, defendants later asserted that our class members are entitled to no more than what's available under 1226(a).

We agree that at the bottom line it is the essential standard

of fairness, and an essential standard of fairness requires a concrete timeline when they know they're going to have their day in court to explain why they should not be locked up. Moreover, liberty is what's expected in our society. And there's case law that I cite, just one quick quote in *Salerno*, where it says, "In our society, liberty is the norm, and detention prior to trial or without trial is a carefully limited exception." The burden falls on the government because liberty is the norm. These are individuals that have already been screened and found to have a bona fide claim for relief.

And it is certainly an essential element of fairness that they be provided the reasons why they're being denied bond, that they be provided a transcript or a recording of their hearing so that they have a meaningful opportunity to assert why the immigration judge erred in denying them bond.

And for these reasons, we respectfully request that the Court grant our class members preliminary injunctive relief so they don't continue to face irreparable harm.

THE COURT: Thank you, counsel, for your arguments. You will see an order within 14 days of today. You should also be seeing shortly the Court's order setting schedule, after I've reviewed your joint status reports.

The other thing I want point out is General Sessions is no longer with us. Do we need to have a substitute of caption in the case? If that's the case, would you please send in that

correction so that we can do that?

MR. ADAMS: Yes. Thank you.

THE COURT: Is there anything else I can help you with?

MR. ADAMS: No. Thank you.

MS. BINGHAM: No. Thank you, Your Honor.

THE COURT: All right. Then have a good evening.

(Adjourned.)

C E R T I F I C A T E

I, Nickoline M. Drury, RMR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do certify that the foregoing is a correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter.

/s/ Nickoline Drury

Nickoline Drury